

within the group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner. The taxpayer must file the replacement agreement with its timely filed income tax return for its first taxable year commencing on or after October 1, 1992, stating that such agreement is a replacement for the agreement filed under §1.1503-2A(c)(3) or the certification filed under §1.1503-2A(d)(3) and identifying the taxable year for which the original agreement or certification was filed. A single agreement described in paragraph (g)(2)(i) of this section may be filed to replace more than one agreement or certification filed under §1.1503-2A; however, each dual consolidated loss must be separately identified. A taxpayer may also elect to apply §1.1503-2 for all open years, with respect to agreements filed under §1.1503-2A(c)(3) or certifications filed under §1.1503-2A(d)(3), in cases where the agreement or certification is no longer in effect and the taxpayer has complied with the provisions of §1.1503-2A. For example, a taxpayer may have had a triggering event under §1.1503-2A that is not a triggering event under §1.1503-2. If the taxpayer fully complied with the requirements of the agreement entered into under §1.1503-2A(c)(3) and filed amended U.S. income tax returns within the time required under §1.1503-2A(c)(3), the taxpayer may file amended U.S. income tax returns consistent with the position that the earlier triggering event is no longer a triggering event.

(3) *Taxpayers that are in compliance with §1.1503-2A but have not filed for relief thereunder.* A taxpayer that is in compliance with the provisions of §1.1503-2A but has not filed an agreement described in §1.1503-2A(c)(3) or a certification described in §1.1503-2A(d)(3) may elect to have the provisions of §1.1503-2 apply for any open year. In particular, a taxpayer may elect to apply the provisions of §1.1503-2 in a case where the dual consolidated loss has been subjected to the separate return limitation year restrictions of §1.1502-21A(c) or 1.1502-21(c) (as appropriate) but the losses, expenses, or deductions taken into account in com-

puting the dual consolidated loss have not been used to offset the income of another person for foreign tax purposes. However, if a taxpayer is a consolidated group, the election must be made with respect to all dual resident corporations or separate units within the group. Likewise, if the taxpayer is an unaffiliated domestic owner, the election must be made with respect to all separate units of the domestic owner.

[T.D. 8434, 57 FR 41084, Sept. 9, 1992; 57 FR 48722, Oct. 28, 1992; 57 FR 57280, Dec. 3, 1992; 58 FR 13413, Mar. 11, 1993, as amended by T.D. 8597, 60 FR 36680, July 18, 1995; T.D. 8677, 61 FR 33325, June 27, 1996; T.D. 8823, 64 FR 36101, July 2, 1999]

#### § 1.1504-0 Outline of provisions.

In order to facilitate the use of §§1.1504-1 through 1.1504-4, this section lists the captions contained in §§1.1504-1 through 1.1504-4.

§ 1.1504-1 *Definitions.*

§ 1.1504-2 [Reserved]

§ 1.1504-3 [Reserved]

§ 1.1504-4 *Treatment of warrants, options, convertible obligations, and other similar interests.*

- (a) Introduction.
  - (1) General rule.
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- (b) Options not treated as stock or as exercised.
  - (1) General rule.
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- (i) General rule.
  - (ii) Issuances, transfers, or adjustments not treated as measurement dates.
  - (iii) Transactions increasing likelihood of exercise.
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- (d) Options.
  - (1) Instruments treated as options.
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    - (i) Options on section 1504(a)(4) stock.
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    - (v) Compensatory options.
      - (A) General rule.
      - (B) Exceptions.
    - (vi) Options granted in connection with a loan.
    - (vii) Options created pursuant to a title 11 or similar case.
    - (viii) Convertible preferred stock.
    - (ix) Other enumerated instruments.
  - (e) Elimination of federal income tax liability.
    - (f) Substantial amount of federal income tax liability.
      - (g) Reasonable certainty of exercise.
        - (1) Generally.
        - (i) Purchase price.
        - (ii) In-the-money option.
        - (iii) Not in-the-money option.
        - (iv) Exercise price.
        - (v) Time of exercise.
        - (vi) Related or sequential options.
        - (vii) Stockholder rights.
        - (viii) Restrictive covenants.
        - (ix) Intention to alter value.
        - (x) Contingencies.
      - (2) Cash settlement options, phantom stock, stock appreciation rights, or similar interests.
      - (3) Safe harbors.
        - (i) Options to acquire stock.
        - (ii) Options to sell stock.
        - (iii) Options exercisable at fair market value.
        - (iv) Exceptions.
        - (v) Failure to satisfy safe harbor.
        - (h) Examples.
          - (i) Effective date.

[T.D. 8462, 57 FR 61800, Dec. 29, 1992]

#### § 1.1504-1 Definitions.

The privilege of filing consolidated returns is extended to all includible corporations constituting affiliated groups as defined in section 1504. See the regulations under § 1.1502 for a description of an affiliated group and the corporations which may be considered as includible corporations.

[T.D. 6500, 25 FR 12106, Nov. 26, 1960]

#### §§ 1.1504-2—1.1504-3 [Reserved]

#### § 1.1504-4 Treatment of warrants, options, convertible obligations, and other similar interests.

(a) *Introduction*—(1) *General rule*. This section provides regulations under section 1504(a)(5) (A) and (B) regarding the circumstances in which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group. The fact that an instrument may be treated as an option under these regulations does not prevent such instrument from being treated as stock under general principles of law. Except as provided in paragraph (a)(2) of this section, this section applies to all provisions under the Internal Revenue Code and the regulations to which affiliation within the meaning of section 1504(a) (with or without the exceptions in section 1504(b)) is relevant, including those provisions that refer to section 1504(a)(2) (with or without the exceptions in section 1504(b)) without referring to affiliation, provided that the 80 percent voting power and 80 percent value requirements of section 1504(a)(2) are not modified therein.

(2) *Exceptions*. This section does not apply to sections 163(j), 864(e), or 904(i) or to the regulations thereunder. This section also does not apply to any other provision specified by the Internal Revenue Service in regulations, a revenue ruling, or revenue procedure. See § 601.601(d)(2)(ii)(b) of this chapter.

(b) *Options not treated as stock or as exercised*—(1) *General rule*. Except as provided in paragraph (b)(2) of this section, an option is not considered either as stock or as exercised. Thus, options are disregarded in determining whether a corporation is a member of an affiliated group unless they are described in paragraph (b)(2) of this section.

(2) *Options treated as exercised*—(i) *In general*. Solely for purposes of determining whether a corporation is a member of an affiliated group, an option is treated as exercised if, on a measurement date with respect to such option—

(A) It could reasonably be anticipated that, if not for this section, the